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KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507				WOO, ISAAC M
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOSEPH ANDREW MELLMER, RUSSELL T. YOUNG,  
ARN D. PERKINS, JOHN M. ROBERTSON, JEFFREY NEIL SABIN,  
MICHAEL C. MCDONALD, DOUGLAS PHILLIPS,  
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DOUGLAS G. EARL, KELLY E. SONDEREGGER,  
DANIEL T. FERGUSON and FARRELL LYNN BROUGH

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Appeal 2008-004706  
Application 09/670,783<sup>1</sup>  
Technology Center 2100

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Decided: November 2, 2009

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Before JOSEPH L. DIXON, JEAN R. HOMERE, and  
CAROLYN D. THOMAS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> Application filed September 27, 2000. The real party in interest is Novell, Inc.

## I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from twice rejected claims 1, 3-58, and 90-101 mailed in a non-final rejection on February 21, 2007, which are all the claims remaining in the application, as claims 2 and 59-89 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

### A. INVENTION

Appellants invented a system and computer-readable storage medium for managing digital identity information in a network. A user can “organize his or her information into one or more profiles which reflect the nature of different relationships between the user and other entities, and grant or deny each entity access to a given profile.” (Spec. 76, Abstract.)

### B. ILLUSTRATIVE CLAIM

The appeal contains claims 1, 3-58, and 90-101. Claims 1, 90, and 98 are independent claims. Claim 1 is illustrative:

1. A computer server system for managing digital identity information, comprising
  - at least one processor in operable connection with a memory configured by a database,
    - the database including a vault for storage of multiple user objects for multiple users,
    - the vault having access rights granted to a system administrator for management of the multiple user objects,
    - each of the user objects having a corresponding safe object,

the safe object containing multiple different profiles accessed and administered exclusively by a single one of the multiple users at the exclusion of the system administrator,

each profile including digital identity information provided by the single one of the multiple users and operable to be shared with other of the multiple users having other multiple different profiles accessible and administered exclusively by the other of the multiple users,

the sharing occurring exclusively upon initiation by the single one of the multiple users. (claim format changed.)

## C. REFERENCE

The sole reference relied upon by the Examiner as evidence in rejecting the claims on appeal is as follows:

O'Flaherty US 6,275,824 B1 Aug. 14, 2001  
(Filed Oct. 2, 1998)

#### D. REJECTION

The Examiner entered the following rejection which is before us for review:

Claims 1, 3-58, and 90-101 are rejected under 35 U.S.C. § 102(e) as being anticipated by O'Flaherty.

## II. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

O'Flaherty

### 1. O'Flaherty discloses:

The privileged view 262 permits viewing, analysis, and alteration of all information. The privileged view

262 will be supplied only to privileged (Class “A”[ ]) applications 110B, such as those required for administration and/or maintenance of the database (e.g., for inserting new customers, deleting ex-customers, handling address changes), and to those applications which handle privacy related functions . . . .

(Col. 8, ll. 46-52.)

### III. PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565) (Fed. Cir. 1992).

Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference. In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.

*Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (internal citations omitted).

### IV. ANALYSIS

#### *Common Feature In All Claims*

Our representative claim, claim 1, recites, *inter alia*, “*the safe object containing multiple different profiles accessed and administered exclusively by a single one of the multiple users at the exclusion of the system administrator.*” Independent claims 90 and 98 recite similar limitations.

Thus, the scope of each of the independent claims includes exclusion of the system administrator from accessing profiles.

*The Anticipation Rejection*

We now consider the Examiner’s rejection of the claims under 35 U.S.C. § 102(b) as being anticipated by O’Flaherty.

*Independent Claims 1, 90, and 98*

Appellants contend that in O’Flaherty “those who perform system administration and maintenance on the extended database 106, which stores privacy parameters of clients in table 202, have unchecked access to the underlying privacy information of the clients. This cannot then anticipate, or even sustain a *prima facie* position of anticipation, for claims requiring ‘exclusion’ of system administrators.” (App. Br. 16.) Appellants further contend that “the terms ‘vault’ and ‘safe objects’ coexist as two structures afforded ‘granted’ and ‘excluded’ rights relative to system administrators, respectively. It is not the situation that a *single* structure has excluded and granted rights at the same time.” (Reply Br. 1.)

The Examiner found that “the claimed limitation includes a logical discrepancy itself regarding administrator. . . . Because access right is granted to a system administrator and also access right is excluded to a system administrator. Thus, it fails to particularly point out and distinctly claim the subject matter which [Appellants] regard[] as the invention.” (Ans. 15.) The Examiner further found that in O’Flaherty “[a]ppropriate security measures are undertaken to assure that the privileged applications

are suitably identified as such, and to prevent privileged view 262 access by any entity that is not so authorized.” (Ans. 16.)

Issue: Have Appellants shown that the Examiner erred in finding that O’Flaherty discloses that “the safe object containing multiple different profiles [are] accessed and administered exclusively by a single one of the multiple users at the exclusion of the system administrator”?

Initially, we note that the Examiner states for the first time in the Answer that the claimed invention fails to particularly point out and distinctly claim the subject matter which Appellants regard as the invention (Ans. 15.) Although this closely resembles a new ground of rejection, no new ground of rejection was ever designated by the Examiner nor approved by the Technology Center Director or designee. Therefore, this issue is not before us for review because it is an improper new grounds of rejection.

As for the Section 102 rejection, the Examiner merely directs our attention to the fact that O’Flaherty takes appropriate security measures to prevent privileged access to any entity that is not so authorized to do so (Ans. 16). However, the Claim 1 requires that “profiles” be “accessed . . . exclusively by a single one of the multiple users at the exclusion of the system administrator.” Contrary to this requirement, O’Flaherty discloses a “privileged view” that permits access of *all* information and that such a privileged view is given for “Class A” administration and/or maintenance purposes (FF 1). In other words, O’Flaherty teaches that system administrators are “Class A” privileged viewers of all information, including

profiles. Therefore, the Examiner has not shown that O'Flaherty discloses profiles being excluded from system administrators' view.

Since we agree with at least one of the arguments advanced by Appellants, we need not reach the merits of Appellants' other arguments. It follows that Appellants have shown that the Examiner erred in finding O'Flaherty renders claims 1, 3-58, and 90-101 unpatentable.

Thus, Appellants have persuaded us of error in the Examiner's conclusion of anticipation for representative claim 1. Therefore, we reverse the Examiner's § 102 rejection of independent claim 1 and of claims 3-58 and 90-101, which stand therewith.

## V. CONCLUSIONS

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1, 3-58, and 90-101.

## VI. DECISION

In view of the foregoing discussion, we reverse the Examiner's rejection of claims 1, 3-58, and 90-101.

REVERSED

llw

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